



STATE OF INDIANA

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June 7, 2011

Ms. Cindy Murphy
Hammond School Board of Trustees
6939 Kennedy Avenue
Hammond, IN 46323

Re: Informal Inquiry 11-INF-25; Hammond School Board of Trustees

Dear Ms. Murphy:

This is in response to your informal inquiry submitted regarding the Hammond School Board of Trustees ("Board"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion. My opinion is based on applicable provisions of the Indiana Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*

In your inquiry, you state that on May 9, 2011, the Board had a regularly scheduled meeting that was properly advertised and was open to the public. You indicate that prior to that meeting, the Board conducted an executive session at 5:30pm for collective bargaining reasons. During the executive session, the Board became aware that a large crowd had gathered to attend the regular public meeting, much beyond capacity of the board room where the public meeting was to be held. The Board decided to cancel the meeting, and the Board president and superintendent were charged with "informing the public that the meeting was canceled due to unsafe conditions and would be rescheduled [sic] in an appropriate venue so all people can be heard." You advise that the police were contacted to assist with crowd control. After a majority of the crowd had left, the Board president met with five members of the community who remained in the building in spite of the meeting's cancellation. The president was later joined by two more of the Board's five members. You informed the other board members that you would not join them because you believed that such a gathering would violate the ODL. Members of the community were permitted to speak to the Board members, and the Board members present held discussions among themselves. Speakers were required to identify themselves and keep comments to three minutes. This meeting was held from 6:30 to 7:50 pm.

Attorney James K. Whitaker responded to your inquiry on behalf of the Board. Mr. Whitaker substantially concurs with your portrayal of events on May 9, 2011. Mr. Whitaker claims, however, that the meeting of a few board members with concerned citizens, after the public meeting was canceled, was "to listen to further

grievances/complaints of 13 individuals, and no official Board of Trustees action was taken (other than to receive information pursuant to I.C. § 5-14-1.5-2(d)(1)) as a result of this informal meeting.”

The General Assembly enacted the ODL intending that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, so that the people may be fully informed. I.C. § 5-14-1.5-1. Accordingly, the ODL requires that, except for those situations where an executive session is authorized, “all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.” I.C. § 5-14-1.5-3(a).

A “meeting” means a gathering of the majority of the governing body of a public agency for the purpose of taking official action upon public business. I.C. § 5-14-1.5-2(c). “Public business” means any function upon which the public agency is empowered or authorized to take official action. I.C. § 5-14.1.5-2(e). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. I.C. § 5-14-1.5-2(d). “Final action” means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. I.C. § 5-14-1.5-2(g).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. § 5-14-1.5-5(a).

Here, it is undisputed that a majority of the Board gathered after its regularly scheduled meeting was canceled. The question is whether the Board did so to take official action upon public business. Mr. Whitaker acknowledges that the Board heard complaints by concerned citizens. If the Board discussed these topics in the context of the Board’s authority to act upon public business, the Board was “receiv[ing] information” regarding the public’s business under subsection 2(d) and, therefore, conducted a “meeting” under the ODL. In that case, the Board violated the ODL because the meeting was not advertised 48-hours in advance.

That said, I note that it appears the Board gathered after the cancelled meeting to listen to citizens who remained after the cancellation of the originally-scheduled meeting. The gathering was ostensibly accessible to any member of the public who wished to attend, and public commentary was invited by the Board members. While I cannot overlook the Board’s failure to properly notice that gathering, it does appear that the gathering was not intended to deprive the public of information regarding the Board’s activities. Rather, the Board seems to have acted in a way that was intended to increase the public’s interaction with the Board and to provide the public with an opportunity to voice concerns. I appreciate the Board’s apparent motives in this instance and trust that all future Board gatherings will comply with not only the intent, but also the letter, of the ODL.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: James K. Whitaker